

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BILL H. DOMINGUEZ, on behalf of himself)	
and all others similarly situated,)	CLASS ACTION
)	
Plaintiff,)	
)	
v.)	C. A. No. 13-1887
)	
YAHOO! INC.)	
)	
Defendant.)	

**DECLARATION OF BILL H. DOMINGUEZ IN SUPPORT OF OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Bill H. Dominguez, declare as follows:

1. I am the plaintiff in the above matter. I am over eighteen years of age and am fully competent to make this Declaration.

2. I have personal knowledge of the matters stated below or am informed of and believe them to be true based on my review of documents that were obtained by my counsel pursuant to subpoena.

3. In late December 2011, I purchased a Samsung Gravity smart phone from a T-Mobile store in Philadelphia, Pennsylvania.

4. The telephone number assigned to my new phone was a telephone number that had never been assigned to me before, the last four digits of which were 4361.

5. I learned later that the phone number had been previously held by a Jose Gonzalez. I have never met Jose Gonzalez and have no knowledge concerning his whereabouts.

6. Shortly after purchasing the new phone, I began to receive unsolicited text messages from Yahoo! advising me that I had received an e-mail.

7. The content of the messages generally advertised certain products or invited me to

sign up for some service. All the messages instructed me to "Read It: <http://m.yahoo.com/mail>."

Attached as Exhibit A is a representative sample of the texts that Yahoo! sent to my telephone.

8. I do not have an email account with Yahoo! and did not sign up for any form of text message notification service through Yahoo!

9. According to the records of T-Mobile consisting of 847 pages, which were provided to my attorney and which I have reviewed, the first such text arrived at 8:04:56 a.m. on December 29, 2011. Those records show that my phone was sent 21 texts throughout that day.

10. On some days I received many more unsolicited text messages daily, and at all times of day and night.

11. As examples: on September 9, 2012, the T-Mobile records show that my phone received 189 texts, beginning at 2:52:46 a.m. and concluding at 11:37:05 p.m.; on November 3, 2012, the T-Mobile records show that my phone received 71 texts, from 12:09:34 a.m. through 11:44:12 p.m.; on January 29, 2013, the T-Mobile records show that my phone received 48 texts from 12:05:00 a.m. through 11:46:19 p.m.

12. By the time Yahoo! finally stopped the texting on May 29, 2013 at 12:05:01 p.m., approximately seven weeks after I instituted this lawsuit, the T-Mobile records show that I had received 27,809 unsolicited text messages, or an average of roughly 54 per day.

13. I have taken photographs documenting approximately 8,480 of the text messages sent from Yahoo! to my cell phone.

14. The photographs show that text messages were sent from numbers that appear on my cell phone as 92000, 92466 or 92500.

15. I never consented to the receipt of the text messages sent by Yahoo!

16. I attempted many times to stop the unsolicited text messages. My efforts to stop

the texts included the following:

a) On a number of occasions, I responded to the text messages by texting back the words “stop” or “help,” which I had been told would stop the texts, and which had worked for me in response to unwanted texts from other companies. Instead of stopping the texts, however, Yahoo! texted me an immediate, automatic reply in the nature of asking me to sign in with a Yahoo id password, or stating that “Unfortunately we were unable to understand your request. Please try again.” Copies of a series of such texts beginning at 5:54 a.m. on September 9, 2012 are attached hereto as Exhibit B.

b) In September 2012, I contacted the FCC to get assistance about how to stop the text messages that I was receiving. The representative I spoke with, named Kevin, advised me, before filing a complaint with the FCC, to try to resolve the problem by contacting Yahoo! directly to stop the texting, and he gave me telephone numbers for Yahoo!

c) I then telephoned Yahoo! and spoke to a representative named Chad, who gave his identification number as 143638. Chad suggested that I try texting the word “Help” to Yahoo!’s number 92466, which I did, but without success. Chad gave me a reference number of 1631693.

d) I again telephoned Yahoo! and spoke to a woman named Denise, and explained the problem with the unsolicited text messages. Denise told me that there was nothing that could be done to stop the texts unless the former owner of the telephone number accessed the password-protected account and authorized Yahoo! to stop the messages. I then asked to speak with a supervisor. The supervisor, who identified himself as Castro, told me the same thing – that the unsolicited text messages would only stop if the former owner of the account so authorized. He stated that “As far as Yahoo is concerned, that number will always belong to

Jose Gonzalez.” Since I did not know the whereabouts of the former owner of the telephone number, I suggested that litigation might be my only option. Castro replied “so sue me.” I then asked to speak to Castro’s supervisor. Castro at first resisted letting me speak to his supervisor. I told him that I was on 100% disability through the Veterans Administration due to my service for the country in the Vietnam War. Castro eventually thanked me for my service and referred me to a person named Jessie, who repeated Yahoo!’s position that only the former owner of the telephone number could authorize Yahoo! to stop texting the messages.

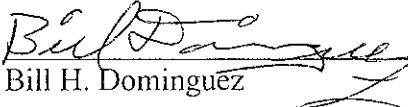
e) I again contacted the FCC to see if they could help me. Coincidentally, I was again connected to the representative named Kevin. This time, Kevin kept me on the phone while he called Yahoo! himself. I could hear his side of the conversation. He asked the Yahoo! representative to stop the texting, and he told me later that the Yahoo! representative repeated the company’s position that Yahoo! did not have to stop the texts.

f) I filed two complaints with the FCC relating to the text messages, which the FCC assigned as user complaint nos. 12-T01029327-1, submitted on September 11, 2012, and 12-T01042769-1, submitted September 28, 2012. Copies of my complaints filed with the FCC, and the FCC’s acknowledgement of my complaints, are attached hereto as Exhibit C.

g) I also lodged a complaint concerning Yahoo!’s texting with the Federal Trade Commission on September 11, 2012. See Exhibit D hereto.

17. It was not until the end of May, 2013, many weeks after I had filed this lawsuit, that the texts from Yahoo! finally stopped.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct.


Bill H. Dominguez

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**INDEX OF EXHIBITS TO
DECLARATION OF BILL H. DOMINGUEZ IN SUPPORT OF OPPOSITION TO
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- A. Representative sample of text messages sent by Yahoo! to Plaintiff's cellular telephone.
- B. Examples of text messages from Yahoo! and Plaintiff's replies in attempt to stop texts, September 9, 2012.
- C. Plaintiff's Complaints filed with the Federal Communications Commission on September 11, 2012 and September 28, 2012.
- D. Plaintiff's Complaint filed with the Federal Trade Commission on September 11, 2012.